

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AMY SCHADEWALD,

Plaintiff,

vs.

THOMAS J. HENRY LAW, PLLC,

Defendant.

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SA-22-CV-00157-JKP

ORDER

Before the Court is the above-styled cause of action, which was referred to the undersigned for all pretrial proceedings. Plaintiff filed this case on February 22, 2022, and the clerk issued summons on March 21, 2022. The record reflects that the issued summons has not yet been returned, and Defendant has not waived service. The Court therefore issued a show cause order on June 23, 2022, directing Plaintiff to show cause why this case should not be dismissed for want of prosecution or failure to timely serve Defendant in accordance with Rule 4(m) of the Federal Rules of Civil Procedure. Plaintiff filed the ordered response on June 30, 2022 [#8]. Upon review of the response, the Court finds that Defendant has been served with process in this case and that any issue regarding the validity of that service must be addressed through a motion filed by Defendant. Otherwise, Defendant is vulnerable to a possible default judgment.

Plaintiff's response to the Court's show cause order provides the Court with an affidavit of service and sworn declaration by Plaintiff's attorney indicating a copy of the Complaint and summons were delivered to a receptionist for Defendant on March 23, 2022, who informed the

process server that she was authorized to accept service for Defendant. (Affidavit of Service [#8-1]; Rosenberg Decl. [#8-2], at ¶ 3.) Based on the affidavit of service, Defendant's responsive pleading was due April 13, 2022, but none was filed. (*Id.*) Plaintiff's counsel subsequently contacted attorney Jamila S. Mensah, who previously represented Defendant in another proceeding, to inquire if she was representing Defendant in this case. (Rosenberg Decl. [#8-2], at ¶ 4.) In that email, Plaintiff's counsel provided Ms. Mensah with a copy of the complaint and affidavit of service. (*Id.*) According to Plaintiff's counsel, Ms. Mensah responded on May 6, 2022, indicating that she would be representing Defendant in this case but asserting that Defendant had not been properly served because Defendant's receptionist was not authorized to accept service. (*Id.*) Ms. Mensah also asserted that Plaintiff is allegedly a party to an arbitration agreement with Defendant. (*Id.*)

Since that time, Plaintiff's counsel asserts that he has been attempting to obtain a copy of the alleged arbitration agreement from Ms. Mensah and to clarify whether Defendant intends to continue to contest service or would consent to voluntarily appear in this case. (*Id.* at ¶¶ 5–6.) According to Plaintiff's counsel, on June 16, 2022, Ms. Mensah stated that Defendant would provide a copy of the employment agreement if the parties would agree to stipulate to the agreement's confidentiality. (*Id.* at ¶ 8.) Plaintiff's counsel does not believe the agreement is confidential. (*Id.*) Ms. Mensah has not provided a response to Plaintiff's counsel regarding the issue with service. (*Id.*)

Plaintiff's affidavit of service establishes that Defendant was served with process on March 23, 2022. Defendant failed to file an answer or other responsive pleading by the deadline to do so, such as a motion to dismiss for improper service of process or a motion to compel arbitration based on the alleged arbitration agreement between the parties. The Court will

therefore order the clerk to docket the affidavit of service attached to Plaintiff's show cause response and provide Defendant with a new deadline by which to file a responsive pleading or to contest the validity of service.

IT IS THEREFORE ORDERED that the Clerk docket Plaintiff's affidavit of service [#8-1] demonstrating that Defendant was served with a copy of Plaintiff's Complaint and summons on March 23, 2022.

IT IS FURTHER ORDERED that Defendant file an answer or other responsive pleading on or before **August 10, 2022**, or otherwise face the possibility of a default judgment in this case.

SIGNED this 11th day of July, 2022.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE